

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 506 OF 2015

Vidya Rambhaji Ambhore
Age : 34 years, Occ : Service,
R/o Pishor, Tq. Kannad,
Dist. Aurangabad.

..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary
Education Department,
Mantralaya, Mumbai – 32.
2. Education Officer (Secondary),
Zilla Parishad, Aurangabad
District Aurangabad.
3. Sidheshwar Krida Mandal,
Kaygaon, Tq. Sillod,
District Aurangabad.
4. The Head Master,
Dayanand Vidyalaya,
Kaygaon, Tq. Sillod,
District Aurangabad.
5. Raneshwar Vidyalaya Hatti,
Tq. Sillod, Dist. Aurangabad
Through its Headmaster
6. Kisan S/o Supdu Shinde
Age : Major, Occ : Asst. Teacher
Serving in
Raneshwar Vidyalaya, Hatti,
Tq. Sillod, Dist. Aurangabad.

7. Nitin S/o Shenphadu Patil
Age : Major, Occ : Asst. Teacher,
Serving in
Raneshwar Vidyalaya Hatti,
Tq. Sillod, Dist. Aurangabad.
8. Amol S/o Devidas Gangawane
Age : Major, Occ : Asst. Teacher,
Serving in
Raneshwar Vidyalaya Hatti,
Tq. Sillod, Dist. Aurangabad.
9. Kathar A.L.,
Age : Major, Occ : Asst. Teacher,
Serving in Dayanand Vidyalaya,
Kaygaon, Tq. Sillod, Dist. Aurangabad.

..RESPONDENTS

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Advocate for Petitioner : Mr. B.L. Sagar Killarika h/f Mr.
S.B. Gastgar
APP for Respondent/State : Mr. A.V. Deshmukh
Advocate for Respondent No.3 : Mr. V.V. Bhavthankar
Advocate for the Respondent Nos. 6 to 9 : Mr. M.P. Kale

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**CORAM : S.S. SHINDE &
P.R. BORA, JJ.**

**RESERVED ON : 9th February, 2016
PRONOUNCED ON : 24th February, 2016**

JUDGMENT :-

Rule. Rule made returnable forthwith and heard finally, by the consent of the learned counsel appearing for the parties.

2. This Petition is filed with the following prayers :-

“(B) By issuing writ of certiorari or any other appropriate writ, order or directions in the like nature to quash and set-aside the impugned order dated 22/24.12.2014 passed by the respondent No.2 rejecting proposal of petitioner for approval as Shikshan Sevak in respondent No.4 School run by respondent No.3 institution.

(C) By issuing writ of mandamus or any other appropriate writ, order or directions in the like nature to direct respondent No.2 to grant approval of petitioner as Shikshan Sevak pursuant to appointment order dated 09.08.2012 and further direct the respondent No.2 to 4 to pay Rs. 8000/- per month as Honorarium to petitioner from her date of joining onwards.”

3. The brief facts leading for filing this Writ Petition are that, the Respondent No.2 by its order dated 1st October, 2010 appointed Deputy Education Officer as an Administrator on Raneshwar Vidyalaya, Hatti, Tq. Sillod, Dist. Aurangabad and Respondent No.4 – School i.e. Dayanand Vidyalaya Kaygaon, both run by Respondent No.3 – Institution. In pursuant to said order, the Administrator took charge of the schools on 18th October, 2010 and

communicated to Respondent No.2.

4. It is the case of the petitioner that, one Mr. Sainath Baburao Male, working as Assistant Teacher in Respondent No.4 – school, resigned from his post on 11th June, 2011. Therefore, one post of Shikshan Sevak become vacant in Respondent No.4 – School and as per roster the said post was/is reserved for S.C. category candidate. Accordingly, then Administrator issued and published advertisement in daily “Sakal” news paper on 13th July, 2012, inviting applications for filling-up one post of Shikshan Sevak from S.C. reserved category in respondent No.4 School. The petitioner has placed on record the copy of the advertisement dated 13th July, 2012.

5. It is further the case of the petitioner that, the petitioner belongs to “Mahar” Scheduled Caste category, possessing requisite qualification of B.A. B.Ed. and pursuant to the said advertisement, she applied for the post of Shikshan Sevak and undergone interview. Total 07 candidates including the petitioner were called for interview on 15th July, 2012. In the interview dated 15th July, 2012,

the petitioner secured highest marks i.e. 41 marks. The petitioner has placed on record the copies of certificates showing her educational qualification and also copy of the list of candidates and statements showing marks secured by the candidates in the interview on 15th July, 2012. It is the case of the petitioner that, considering most satisfactory performance of petitioner in the interview, and she being highest amongst all candidates called for interview by following due procedure, the Administrator/ Deputy Education Officer, Z.P., Aurangabad issued appointment order dated 9th August, 2012 in favour of petitioner as a Shikshan Sevak. On the basis of said appointment order, the petitioner reported duties on 14th August, 2012 in the respondent No.4 – School. The petitioner has placed on record the copies of the appointment order dated 9th August, 2012 and joining report dated 14th August, 2012.

6. It is the further case of the petitioner that, Head Master/Administrator forwarded petitioner's proposal for approval on the post of Shikshan Sevak in respondent No.4 – School on 11th December, 2012 to the respondent No.2 along with all relevant documents i.e. advertisement, details

of candidates called for interview, statement of marks secured by candidates, Roster Sanction order issued by the Divisional Commissioner, Aurangabad, Staff Approval and appointment order etc. The petitioner has placed on record the copies of the petitioner's proposal for approval as Shikshan Sevak in respondent No.4 – School forwarded on 11th December, 2012 with relevant documents.

Meanwhile, by the order dated 30th January, 2014, the appointment of the Deputy Education officer as Administrator of the Respondent No.4 School run by the Respondent No.3 – Institution came to be cancelled. Accordingly, charge of the respondent No.4 – School was given to the respondent No.3 – Institution. The petitioner has placed on the record the copy of the order dated 30th January, 2014 issued by the respondent No.2 thereby cancelling appointment of Administrator.

7. The learned counsel appearing for the petitioner submits that, the petitioner's proposal for approval was pending since December, 2012 in the office of the Respondent No.2, however, instead of repeated requests, the

Respondent No.2 – Authority neither considered the request of the petitioner nor granted approval to her appointment as Shikshan Sevak. The petitioner approached the High Court by filing Writ Petition No. 3769/2014, seeking directions to the Respondents to decide the proposal of the petitioner seeking approval expeditiously. Accordingly, in the said Writ Petition, the directions were issued by the High Court directing the respondents to take decision on the proposal within six months from 18th June, 2014. Respondent No.2 refused the approval to the proposal of the petitioner on the ground that, in the academic year 2012-2013, as per staff approval, 10 posts are sanctioned and the petitioner is not appointed within those 10 posts. Respondent No.4 removed the petitioner's name from the Muster Roll and did not allow her to teach students.

It is further submitted that, by following due procedure the petitioner was appointed as Shikshan Sevak on clear vacant post reserved for Scheduled Caste category candidate. The then Administrator, who was appointed by respondent No.2, by following provisions of M.E.P.S. Act and Rules appointed the petitioner as Shikshan Sevak. The

petitioner completed more than two years service as Shikshan Sevak in respondent No.4 – School run by respondent No.3 – Institution. In view of section 5 of M.E.P.S. Act, the petitioner deemed to be permanent employee of respondent No.4 – School to whom respondent No.2 and 4 abruptly not allowing to teach students as usual from 1st January, 2015. Not only this the petitioner has not been paid salary from her date of joining. By keeping proposal of petitioner, for approval pending for more than two years without assigning any reason the respondents unnecessarily harassed mentally, physically and economically, and lastly when three years period of petitioner as Shikshan Sevak come to an end within short time, the respondent No.2, in arbitrary manner without considering relevant provisions as well as staff approval in its proper perspective, rejected proposal of petitioner for approval as Shikshan Sevak on 22/24th December, 2014 which was pending since 11th November, 2012.

8. The learned counsel appearing for the petitioner submits that, in view of provisions of Section 4 (1) of the Maharashtra Act No.VIII of 2003, posts reserved for S.C.,

S.T., D.N.T. (V.J.) Nomadic Tribes, S.B.C. and O.B.Cs., cannot be filled in by the candidates not belonging to that caste, tribe, category or class, for which the posts are reserved. In addition it is submitted that, the law declares that, all the appointments made in violation of mandate of Section 4(1) are void. In this regard there is specific provision in Section 11 of the Maharashtra Act No. VIII of 2003. The learned counsel further submitted that, all the appointments made by respondent No.3 – Society after 2003, which are in violation of Section 4(1) and the Roster point are void, therefore, deserve to be quashed and set aside. The learned counsel appearing for the petitioner further submits that, as is clear from the record, there was backlog of S.C., S.T. categories in respondent No.3 – Society. Even then, without following due procedure, various appointments have been made by the Society. All such appointees including respondent Nos. 6 to 9 are deemed to be treated as employees appointed in view of Rule-9(9)(b) of the M.E.P.S. Rules, 1981 i.e. temporary appointments till availability of eligible candidate from reserved category and appointed on year to year basis. It means, statutorily respondent Nos. 6 to 9 are temporary appointees and

therefore, no right stands created in their favour for the purpose of claim of permanency.

9. The learned counsel appearing for the petitioner submits that, in view of the provisions of Maharashtra Act No. VIII of 2003, at any stretch of imagination no right of permanency stands created in favour of respondent Nos. 6 to 9. Therefore, they cannot claim benefits of permanency, simpliciter on the basis of grant of approval vis-a-vis letter of appointment. The learned counsel further submitted that, whereas, the petitioner has been appointed by following due procedure of law and to fill-up the backlog, therefore, the petitioner is entitled to claim the benefits of permanency. As well as right of the petitioner to claim permanency and consequential benefits is based on statutory provisions, therefore, it is a statutory right of the petitioner to claim permanency in the facts and circumstances as well as legal provisions. The learned counsel appearing for the petitioner also invited our attention to the Rejoinder Affidavit filed in reply to the replies filed by the respondents, and submits that, the Petition may be allowed.

10. The affidavit in reply is filed by the Respondent

No.3. It is stated in the said affidavit in reply that, the appointment of the Administrator was on two schools. He had no authority to make the appointments and also to publish the advertisement for filling in one post of Shikshan Sevak. The appointment given by Respondent No.2 was illegal. The learned counsel appearing for the Respondent No.3 submits that, when there were sanctioned posts available in the Respondent No.4 – School, Administrator in collusion with the petitioner, appointed the petitioner as Shikshan Sevak in absence of any sanctioned post. Therefore, the learned counsel appearing for the Respondent No.3 submits that, the Petition may be rejected.

11. The learned A.G.P. invited our attention to the affidavit in reply filed on behalf of the Respondent No.2. He submits that, the Administrator, who has appointed the petitioner, had no authority to issue such appointment. Moreover, in the academic year 2013-2014 due to decrease in the strength of students, one post of Assistant Teacher was rendered surplus and the approved posts were reduced to 9. In these circumstances, there was no sanctioned post available for approving the appointment of the petitioner.

The learned A.G.P. also invited our attention to the additional affidavit in reply filed on behalf of the Respondent No.2 and submits that, the Education Officer (Secondary), Zilla Parishad, Aurangabad has not given any prior permission to advertise the post on which the petitioner is appointed. Respondent Nos. 6 to 9 have filed their affidavit in reply. They have denied the allegations in the Petition against them. It is stated by them that, their appointments were as per the approved staffing pattern on clear vacancies. Even the Respondent No.2 was appointed them on clear vacancy from O.B.C. category. Therefore, relying upon the averments made in the reply and additional reply, the learned counsel appearing for Respondent Nos. 6 to 9 submits that, the Petition is devoid of any merits and same may be rejected.

12. The Respondent No.4 has filed separate affidavit denying all allegations stating therein that, the appointment of the petitioner was not legal and same was in excess of approved strength of teachers.

13. During the course of hearing, it transpired that, one post of assistant teacher has become vacant after filing

this Petition. However, the learned counsel appearing for the Respondent – Management submits that, the said post is from S.T. category and the Management will have to appoint the candidate from S.T. category.

14. We have given careful consideration to the submissions of the learned counsel appearing for the respective parties. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein, replies filed by the respective respondents, rejoinder affidavit filed by the petitioner and the various documents placed on record by the parties to the Petition.

15. It is not in dispute that, the petitioner belongs to S.C. category. It is also not in dispute that, there was appointment of Administrator on the school, in which the petitioner came to be appointed by the said Administrator. There is no denial to the fact that, the advertisement was issued advertising the post and in pursuant to the said advertisement, there were interviews; and the petitioner was selected being meritorious amongst the candidates, who applied for the said post. The petitioner has placed on

record the letter dated 1st October, 2010, issued by the Education Officer (Secondary), Zilla Parishad, Aurangabad addressed to one Shri. N.G. Thakur, Deputy Education Officer (Secondary), Zilla Parishad, Parbhani, appointing him as Administrator on two schools, namely, Raneshwar Vidyalaya, Hatti, Tq. Silod, Dist. Aurangabad and Dayanand Vidyalaya, Kaygaon, Tq. Silod, Dist. Aurangabad. It further appears that, on 18th October, 2010, Shri. N.G. Thakur had taken charge as Administrator. The petitioner has placed on record the copy of the advertisement dated 13th July, 2012 published in daily "Sakal", wherein the post of Shikshan Sevak for English subject and Assistant teacher in mathematic subject was advertised, in order to fill in the backlog from the candidates from S.C. category. The petitioner has also placed on record the certificates showing her qualification. The petitioner has also placed on record the appointment order dated 9th August, 2012 issued by the Administrator, Dayanand Vidyalaya, Kaygaon, wherein the petitioner was appointed as Shikshan Sevak. The said appointment was w.e.f. 14th August, 2012 till 13th August, 2015. It further appears that, the petitioner joined the services on 14th August, 2012 and on 11th August, 2015, the

said Administrator has forwarded the proposal for approval to the appointment of the petitioner to the Education Officer (Secondary), Zilla Parishad, Aurangabad. It further appears that, resolution was passed in the meeting of the Administrator and Headmasters of both the schools appointing the petitioner on the post of Shikshan Sevak. There are also proceedings placed on record showing the procedure followed at the time of appointment and interviews of the candidates. The documents placed on record further show that, the higher authorities directed the Management of the school to fill in the backlog. There was challenge to the advertisement issued by the said Administrator for appointment on the post of assistant teacher and the Shikshan Sevak, so as to fill in the backlog from S.C. category by way of filing Writ petition no.6911/2012 (Siddhehwar Krida Mandal, Sillod V/s Vishwanath Dhondiba Raut and ors). The said Writ Petition was heard by the Division Bench of this Court on 20th August, 2012. The submissions of the petitioner therein have been recorded in para 1 and 2. Paras 3 to 7 of the said order read thus :-

“3) The core objection of the petitioners is that

since they have resolved the dispute, the Administrator has no power or authority to issue the advertisement for recruiting the teachers in the schools.

4) Learned Counsel, placing reliance on the provisions contained in Sections 3, 4, 5 and 6 of The Maharashtra Education Institutions (Management) Act, 1976, submitted that unless prior approval of the Director is sought by the Administrator, administrator has no authority to recruit staff in schools run by the trust.

5) The petitioners contend that they are duly elected members of the trust to look after the affairs of the trust and two year's tenure of the Administrator has not expired so far.

6) We have perused the order passed by the Director appointing the Administrator.

7) In the facts of the case, no interference is warranted in extra-ordinary writ jurisdiction. The petition lacks merit, it is dismissed. It is made clear that dismissal of this petition is not to be treated as approval of decision of the administrator.”

16. Therefore, there was unsuccessful attempt to

challenge the advertisement dated 13th July, 2012. Even the power or authority to issue the advertisement for recruiting the teachers in the schools by the Administrator was questioned in the said Writ Petition. However, the said Writ Petition was dismissed. Therefore, in view of the said decision of this Court, the contention of the respondents that, the Administrator illegally issued advertisement, cannot be accepted. Therefore, keeping in view the discussion in foregoing paragraphs and fact that, there is one vacant post of assistant teacher is available in the Respondent No.3 school, on account of resignation by one teacher in the Respondent No.3 – school, in our opinion, ends of justice would be met in case the Respondent No.2 is directed to accord approval to the services of the petitioner, without raising the ground that, his appointment is made by the Administrator and same was in excess of sanctioned posts, however, subject to other formalities, if any, as expeditiously as possible, and preferably within eight weeks from today.

In the circumstances, the impugned order dated 22/24th December, 2014 passed by the Respondent No.2,

rejecting the proposal of the petitioner for approval as Shikshan Sevak in Respondent No.4 School run by Respondent No.3 – institution, is quashed and set aside.

17. Once the decision of approval is taken and if it is favourable to the petitioner, the Respondents shall take steps to pay the arrears of honorarium to the petitioner, however, subject to verification of the school record.

18. Rule made absolute in above terms. The Petition stands disposed of.

Sd/-
(**P.R. BORA, J.**)

Sd/-
(**S.S. SHINDE, J.**)

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